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Partners, Inc.

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 v.

13 JOHN B. BIVONA; SADDLE RIVER
14 ADVISERS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
15 MAZZOLA

16 Defendants.

) Case No. 3:16-cv-1386

) **FORMER RECEIVER'S**
) **ADMINISTRATIVE**
) **APPLICATION FOR AN**
) **ORDER PURSUANT TO**
) **LOCAL RULE 7-11 FOR THE**
) **APPROVAL OF FEES FOR**
) **THE PERIOD OCTOBER 1**
) **TO DECEMBER 31, 2018,**
) **FOR THE FORMER**
) **RECEIVER AND COUNSEL**

) Date: No Date

) Time:

) Courtroom: 5

) Judge: Edward M. Chen

20
21 **APPLICATION FOR PAYMENT OF FORMER RECEIVER AND ITS**
22 **COUNSEL'S FEES**

23 **I. Background**

24 On October 11, 2016, this Honorable Court issued an Order of
25 Appointment of Receiver (the "Order") and thereby appointed Sherwood
26 Partners, Inc. ("Sherwood") as Receiver in this matter. However, as the
27 Court is aware, on February 28, 2019, it substituted the new Receiver,
28 Kathy Phelps Esq., for Sherwood. The previous Order also appointed John

1 W. Cotton ("Cotton") of Gartenberg, Gelfand & Hayton LLP as Counsel to
 2 the now former Receiver, Sherwood. Previously, Sherwood and its
 3 counsel submitted interim applications for fees and expenses for the time
 4 periods October 11, 2016, to March 31, 2017 (See: Docket Nos. 207 and
 5 215, First Quarterly Fee Application filed on July 13, 2017, and approved
 6 on July 25, 2017 and August 11, 2017); April 1 to June 30, 2017 (See:
 7 Docket No. 275, Second Quarterly Fee Application filed on October 19,
 8 2017 and approved, but with a 20% holdback for Sherwood on *both* the
 9 first (retroactive) and second fee applications, on November 16, 2017);
 10 July 1 to September 30, 2017 (See: Docket No. 303, Third Quarterly Fee
 11 Application, filed on December 26, 2017 and approved by the Court on
 12 January 25, 2018); October 1 to December 31, 2017 (See: Docket No. 315,
 13 Fourth Quarterly Fee Application, approved by the Court on March 13,
 14 2018); January 1 to March 31, 2018 (See: Docket No. 387, Fifth Quarterly
 15 Fee Application, approved by the Court on August 2, 2018, but with an
 16 additional hold-back of 10% or \$7,507) and April 1 to June 30, 2018 (See:
 17 Docket No. 413, Sixth Quarterly Fee Application, approved by the Court on
 18 October 23, 2018, but with an additional hold-back of 50% or \$35,888.58);
 19 and the Seventh Quarterly Fee Application, July 1 to September 30, 2018,
 20 approved by the Court on December 13, 2018.

21 The total fees and expenses of the Sherwood approved by the Court to
 22 date total \$689,442.85¹ and the total fees and expenses of the former
 23 Receiver's counsel approved by the Court and paid to date are
 24

25 _____
 26 ¹ This amount is exclusive of the amount paid to Sherwood for work performed
 27 during the period March to October, 2016, \$203,925.53, when it acted as
 28 Independent Monitor. The Court ordered holdbacks to the Receiver's approved
 fee applications, which currently total \$137,559.12 and have not been paid to
 the Receiver.

1 \$214,349.50.² The total fees and expenses of Sherwood being requested in
 2 this Quarterly Application (the “Application”) are \$ 35,341.96, as set forth
 3 in Sec. II below. The total fees and expenses of the Sherwood’s counsel
 4 requested in this Application are \$15,235.22, as set forth in Sec. III below.

5 Sherwood has, after discussion with the staff of plaintiff SEC, agreed
 6 to a holdback of 20% of the fees requested in this Application, in the dollar
 7 amount of \$7,068.39. This amount if approved by the Court, when added
 8 to the previous amount of holdbacks, will bring the total amount of
 9 Sherwood’s fee holdbacks to \$144, 627.51.

10 In this Application, Sherwood through Georgiana Nertea (“Nertea”),
 11 requests that this Court approve its Eighth Quarterly fees and expenses as
 12 well as that of its Counsel, for the time period October 1 to and including
 13 December 31, 2018. The Application consists of the accompanying
 14 Declaration of Nertea, the time records of Sherwood (Exhibit A to the
 15 Declaration of Nertea), a narrative of the work performed by Sherwood
 16 (Exhibit B to the Declaration of Nertea) and the SEC’s Standard Fund
 17 Accounting Report (“SFAR”, Exhibit C to the Declaration of Nertea). The
 18 former Receiver also requests approval for the fees of its counsel, John W.
 19 Cotton for the same time period. The Declaration of John W. Cotton with
 20 accompanying billing statements from his firm (Exhibit A to the
 21 Declaration of Cotton) also accompanies this Application.

22 **II. The Fee Application of Sherwood**

23 As the Declaration of Nertea sets forth, the interim period for
 24 which it makes this Application is October 1, 2018 to and including
 25 _____

26 ² Through administrative oversight, Sherwood did not pay its counsel the Court
 27 approved fees and expenses for the Third Quarter 2018 in the amount of
 28 \$27,065.50. Sherwood has notified the new Receiver, Kathy Phelps, of this
 oversight and requested that she make the approved payment to Gartenberg,
 Gelfand & Hayton LLP.

1 December 31, 2018. During this time period, the personnel who worked
 2 on this matter, and their discounted hourly rates include Georgiana Nertea
 3 (at a \$295 regular billing rate and a \$195 reduced billing rate). Sherwood's
 4 total charge for time and disbursements in this interim fee request is
 5 \$35,341.96. This represents a total of 122.7 hours, or 40.9 hours per
 6 month. Nertea Decl. at ¶ 3.

7 Sherwood has applied a 15% reduction to its standard rate. Nertea
 8 Decl., at ¶ 3. Nertea has personally reviewed all the time spent by
 9 Sherwood personnel on Receivership tasks and has attested to the
 10 accuracy and appropriateness of the time billed and has set forth the
 11 major work categories in which time was spent. Nertea Decl., at ¶ 4.
 12 Finally, Nertea has prepared the required SEC Standard Fund Accounting
 13 Report, or "SFAR", for the period covered by this Application. Nertea Decl.,
 14 at ¶ 5.

15 Nertea has broken down the total billed hours to the following
 16 organized task categories: Asset management (25.10 hours); Investor and
 17 Creditor relations (16 hours); Investors' Group Communications (.80 hours)
 18 Records Management (4.8 hours); Case Support and Administration (49.1
 19 hours); SEC support (6.2 hours); Claims and litigation (19.8 hours); Solis
 20 Funds Associates, LLC (0 hours); and Tax Related Matters (.90 hours)
 21 Nertea Decl., at ¶ 4.

22 **III. The Fee Application of Sherwood's Counsel**

23 As the Declaration of John Cotton of Gartenberg, Gelfand & Hayton
 24 ("GG&H") sets forth, the period for which it makes its Eighth interim fee
 25 application is October 1 to and including December 31, 2018. All the time
 26 spent on Receivership legal matters were undertaken by Cotton alone, at a
 27 reduced billing rate of \$450 an hour. GG &H's total charge for time
 28 (\$14,692.50) and disbursements (\$ 542.72) in this Application is

1 \$15,235.22. This represents a total of 36.9 hours, or 12.3 hours per month.
 2 Cotton Decl. at ¶ 3. GG & H has applied a 15% courtesy reduction to its
 3 standard rate and has only used personnel appropriate to the level of
 4 work being undertaken. Cotton Decl., at ¶ 3. Cotton has personally
 5 reviewed all the time spent on Receivership tasks and has attested to the
 6 accuracy and appropriateness of the time billed and has set forth the
 7 major work categories in which time was spent. Cotton Decl. at ¶ ¶4 to 6.

8 During the time period of this Application, the work performed
 9 by Cotton consisted of the following work categories: responding to and
 10 advising the Receiver (4.3 hours); responding to and meeting with the
 11 SEC concerning SRA IG investor group concerns and the Joint Plan of
 12 Distribution (3.3 hours); review, preparation of and filing court
 13 documents (18 hours); responding to and attending investor and
 14 Defendants' counsel calls and related questions (5 hours); and handling
 15 issues and communications regarding Estate investments: Mongo DB,
 16 EAC, Practice Fusion, etc. (6.3 hours) . Cotton Declaration at ¶ 4.

17 18 **IV. The SEC Has Reviewed the Accompanying Fee Invoices**

19 Sherwood and its counsel timely submitted their
 20 accompanying fee applications to the Plaintiff SEC for its initial review in
 21 January 2019, as required by the Court on October 15, 2018. The SEC and
 22 Sherwood held subsequent, substantive communications regarding its
 23 current invoice, as a result of which Sherwood has agreed to a 20%
 24 holdback. Nertea Declaration at ¶ 4. As a result of the foregoing, the SEC
 25 has indicated that it has no objection to the fees now applied for in this
 26 Application, for either Sherwood, or its counsel. And Sherwood has
 27 agreed to the holdback amount of \$7,068.39. Counsel for Sherwood has
 28

1 obtained the approval of all interested parties' counsel to the use of L.R.
2 7-11 for this fee application.

3 **V. Conclusion**

4 For the forgoing reasons, Sherwood and it's counsel request that the
5 Court approve the Application for Eighth Quarterly Fees by signing the
6 attached Proposed Order.

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Dated: April 17, 2019

GARTENBERG GELFAND HAYTON
LLP

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By: /s/ John W. Cotton

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John W. Cotton
Counsel to the Receiver

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